

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE: Christopher W Delgatto  
970 Bunker Hill Road #254  
Houston, TX 77024

CHAPTER 13  
CASE NO. 10-34488-H4

DEBTOR

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MOTION TO DISMISS OR CONVERT

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

David G. Peake, Chapter 13 Trustee moves the court to Dismiss or Convert the above-referenced case for the following reasons:

The Chapter 13 Plan must be amended to provide for the claims of the secured and priority Creditors in full within the terms of the Plan.

Payments due pursuant to U.S.C. § 1326(a)(1) have not been made.

Debtors failed to appear for the Meeting of Creditors and this constitutes a failure to appear in proper prosecution of the case for purposes of subsequent eligibility under 11 U.S.C. § 109.

The Debtors have not filed their Federal Income Tax return for the following years: . Therefore the Debtors are not able to meet the burden of proving that the Plan complies with 11 U.S.C. § 1322 (a) (2).

The Debtors have caused unreasonable delay that is prejudicial to the Creditors.

Other:

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON AUGUST 23, 2010 AT 10:00 AM IN U.S. BANKRUPTCY COURT, 515 RUSK, ROOM 600, 6TH FLOOR, HOUSTON, TX 77002-0000. IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY ONE DAYS AS FOLLOWS: 1. FILE A RESPONSE WITHIN TWENTY ONE DAYS THAT SHOWS THAT THE ABOVE-CITED DEFICIENCY HAS BEEN CURED, OR 2. FILE A RESPONSE WITHIN TWENTY ONE (21) DAYS THAT SHOWS THAT THE COURT SHOULD ALLOW YOU ADDITIONAL TIME TO CURE THE ABOVE-CITED DEFICIENCY. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND DISMISS OR CONVERT YOUR CASE. IF THE DEFICIENCY IS FOR FAILURE TO FILE TAX RETURNS AND THE CASE IS DISMISSED, YOU WILL NOT BE ALLOWED TO FILE ANOTHER BANKRUPTCY CASE UNTIL ALL OF YOUR RETURNS ARE FILED.**

Wherefore, the Trustee requests that the case be dismissed or converted to Chapter 7, whichever shall be determined in the best interest of creditors.

Dated: July 28, 2010

/s/ David G. Peake

David G. Peake  
Standing Chapter 13 Trustee

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**CERTIFICATE OF SERVICE**

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I certify that a true and correct copy of the foregoing document was sent to all parties listed on the matrix on file with the Bankruptcy Clerk's Office on or about the time this document was electronically filed with the Clerk on 07/28/2010. A copy of the Certificate of Mailing of the document is on file and may be viewed at the U.S. Bankruptcy Clerk's Office.

Electronically signed by  
David G. Peake, Chapter 13 Trustee

Debtor's Attorney of Record:  
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KENNETH A. KEELING ATTORNEY  
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E R SOLUTIONS  
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Debtor:  
Christopher W Delgatto  
970 Bunker Hill Road #254  
Houston, TX 77024

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DP RECOVERY  
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CAPITAL ONE NA  
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**ORDER OF DISMISSAL**

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The Court has considered the Trustee's Motion to Dismiss and any response or opposition thereto. The court is of the opinion that proper notice to all parties in interest has been given and that the Motion should be granted. It is therefore

ORDERED that this case is dismissed.

Dated: \_\_\_\_\_

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United States Bankruptcy Judge